

109TH CONGRESS
1ST SESSION

S. 2138

To prohibit racial profiling.

IN THE SENATE OF THE UNITED STATES

DECEMBER 16, 2005

Mr. FEINGOLD (for Mr. CORZINE, Mr. LAUTENBERG, Mr. KENNEDY, Mr. DURBIN, Mr. KERRY, Mrs. BOXER, Mr. DODD, Ms. CANTWELL, Ms. MIKULSKI, Mr. OBAMA, and Ms. STABENOW) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To prohibit racial profiling.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “End Racial Profiling Act of 2005” or “ERPA”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings, purposes, and intent.
- Sec. 3. Definitions.

TITLE I—PROHIBITION OF RACIAL PROFILING

- Sec. 101. Prohibition.
- Sec. 102. Enforcement.

TITLE II—PROGRAMS TO ELIMINATE RACIAL PROFILING BY
FEDERAL LAW ENFORCEMENT AGENCIES

Sec. 201. Policies to eliminate racial profiling.

TITLE III—PROGRAMS TO ELIMINATE RACIAL PROFILING BY
STATE, LOCAL, AND INDIAN TRIBAL LAW ENFORCEMENT
AGENCIES

Sec. 301. Policies required for grants.

Sec. 302. Administrative complaint procedure or independent auditor program
required for grants.

Sec. 303. Involvement of Attorney General.

Sec. 304. Data collection demonstration project.

Sec. 305. Best practices development grants.

Sec. 306. Authorization of appropriations.

TITLE IV—DATA COLLECTION

Sec. 401. Attorney General to issue regulations.

Sec. 402. Publication of data.

Sec. 403. Limitations on publication of data.

TITLE V—DEPARTMENT OF JUSTICE REGULATIONS AND
REPORTS ON RACIAL PROFILING IN THE UNITED STATES

Sec. 501. Attorney General to issue regulations and reports.

TITLE VI—MISCELLANEOUS PROVISIONS

Sec. 601. Severability.

Sec. 602. Savings clause.

1 SEC. 2. FINDINGS, PURPOSES, AND INTENT.

2 (a) FINDINGS.—Congress finds the following:

3 (1) Federal, State, and local law enforcement
4 agents play a vital role in protecting the public from
5 crime and protecting the Nation from terrorism. The
6 vast majority of law enforcement agents nationwide
7 discharge their duties professionally and without
8 bias.

9 (2) The use by police officers of race, ethnicity,
10 national origin, or religion in deciding which persons

1 should be subject to traffic stops, stops and frisks,
2 questioning, searches, and seizures is improper.

3 (3) In his address to a joint session of Congress
4 on February 27, 2001, President George W. Bush
5 declared that “racial profiling is wrong and we will
6 end it in America.”. He directed the Attorney Gen-
7 eral to implement this policy.

8 (4) In June 2003, the Department of Justice
9 issued a Policy Guidance regarding racial profiling
10 by Federal law enforcement agencies which stated:
11 “Racial profiling in law enforcement is not merely
12 wrong, but also ineffective. Race-based assumptions
13 in law enforcement perpetuate negative racial stereo-
14 types that are harmful to our rich and diverse de-
15 mocracy, and materially impair our efforts to main-
16 tain a fair and just society.”.

17 (5) The Department of Justice Guidance is a
18 useful first step, but does not achieve the President’s
19 stated goal of ending racial profiling in America,
20 as—

21 (A) it does not apply to State and local law
22 enforcement agencies;

23 (B) it does not contain a meaningful en-
24 forcement mechanism;

25 (C) it does not require data collection; and

1 (D) it contains an overbroad exception for
2 immigration and national security matters.

3 (6) Current efforts by State and local govern-
4 ments to eradicate racial profiling and redress the
5 harms it causes, while also laudable, have been lim-
6 ited in scope and insufficient to address this national
7 problem. Therefore, Federal legislation is needed.

8 (7) Statistical evidence from across the country
9 demonstrates that racial profiling is a real and
10 measurable phenomenon.

11 (8) As of November 15, 2000, the Department
12 of Justice had 14 publicly noticed, ongoing, pattern
13 or practice investigations involving allegations of ra-
14 cial profiling and had filed 5 pattern or practice law-
15 suits involving allegations of racial profiling, with 4
16 of those cases resolved through consent decrees.

17 (9) A large majority of individuals subjected to
18 stops and other enforcement activities based on race,
19 ethnicity, national origin, or religion are found to be
20 law abiding and therefore racial profiling is not an
21 effective means to uncover criminal activity.

22 (10) A 2001 Department of Justice report on
23 citizen-police contacts that occurred in 1999, found
24 that, although Blacks and Hispanics were more like-
25 ly to be stopped and searched, they were less likely

1 to be in possession of contraband. On average,
2 searches and seizures of Black drivers yielded evi-
3 dence only 8 percent of the time, searches and sei-
4 zures of Hispanic drivers yielded evidence only 10
5 percent of the time, and searches and seizures of
6 White drivers yielded evidence 17 percent of the
7 time.

8 (11) A 2000 General Accounting Office report
9 on the activities of the United States Customs Serv-
10 ice during fiscal year 1998 found that—

11 (A) Black women who were United States
12 citizens were 9 times more likely than White
13 women who were United States citizens to be x-
14 rayed after being frisked or patted down;

15 (B) Black women who were United States
16 citizens were less than half as likely as White
17 women who were United States citizens to be
18 found carrying contraband; and

19 (C) in general, the patterns used to select
20 passengers for more intrusive searches resulted
21 in women and minorities being selected at rates
22 that were not consistent with the rates of find-
23 ing contraband.

24 (12) A 2005 report of the Bureau of Justice
25 Statistics of the Department of Justice on citizen-

1 police contacts that occurred in 2002, found that, al-
2 though Whites, Blacks, and Hispanics were stopped
3 by the police at the same rate—

4 (A) Blacks and Hispanics were much more
5 likely to be arrested than Whites;

6 (B) Hispanics were much more likely to be
7 ticketed than Blacks or Whites;

8 (C) Blacks and Hispanics were much more
9 likely to report the use or threatened use of
10 force by a police officer;

11 (D) Blacks and Hispanics were much more
12 likely to be handcuffed than Whites; and

13 (E) Blacks and Hispanics were much more
14 likely to have their vehicles searched than
15 Whites.

16 (13) In some jurisdictions, local law enforce-
17 ment practices, such as ticket and arrest quotas and
18 similar management practices, may have the unin-
19 tended effect of encouraging law enforcement agents
20 to engage in racial profiling.

21 (14) Racial profiling harms individuals sub-
22 jected to it because they experience fear, anxiety, hu-
23 miliation, anger, resentment, and cynicism when
24 they are unjustifiably treated as criminal suspects.
25 By discouraging individuals from traveling freely, ra-

1 cial profiling impairs both interstate and intrastate
2 commerce.

3 (15) Racial profiling damages law enforcement
4 and the criminal justice system as a whole by under-
5 mining public confidence and trust in the police, the
6 courts, and the criminal law.

7 (16) In the wake of the September 11, 2001,
8 terrorist attacks, many Arabs, Muslims, Central and
9 South Asians, and Sikhs, as well as other immi-
10 grants and Americans of foreign descent, were treat-
11 ed with generalized suspicion and subjected to
12 searches and seizures based upon religion and na-
13 tional origin, without trustworthy information link-
14 ing specific individuals to criminal conduct. Such
15 profiling has failed to produce tangible benefits, yet
16 has created a fear and mistrust of law enforcement
17 agencies in these communities.

18 (17) Racial profiling violates the equal protec-
19 tion clause of the fourteenth amendment to the Con-
20 stitution of the United States. Using race, ethnicity,
21 religion, or national origin as a proxy for criminal
22 suspicion violates the constitutional requirement that
23 police and other government officials accord to all
24 citizens the equal protection of the law. *Batson v.*

1 Kentucky, 476 U.S. 79 (1986); *Palmore v. Sidoti*,
2 466 U.S. 429 (1984).

3 (18) Racial profiling is not adequately ad-
4 dressed through suppression motions in criminal
5 cases for 2 reasons. First, the Supreme Court held,
6 in *Whren v. United States*, 517 U.S. 806 (1996),
7 that the racially discriminatory motive of a police of-
8 ficer in making an otherwise valid traffic stop does
9 not warrant the suppression of evidence under the
10 fourth amendment to the Constitution of the United
11 States. Second, since most stops do not result in the
12 discovery of contraband, there is no criminal pros-
13 ecution and no evidence to suppress.

14 (19) A comprehensive national solution is need-
15 ed to address racial profiling at the Federal, State,
16 and local levels. Federal support is needed to combat
17 racial profiling through specialized training of law
18 enforcement agents, improved management systems,
19 and the acquisition of technology such as in-car
20 video cameras.

21 (b) PURPOSES.—The purposes of this Act are—

22 (1) to enforce the constitutional right to equal
23 protection of the laws, pursuant to the fifth amend-
24 ment and section 5 of the fourteenth amendment to
25 the Constitution of the United States;

1 (2) to enforce the constitutional right to protec-
 2 tion against unreasonable searches and seizures,
 3 pursuant to the fourteenth amendment to the Con-
 4 stitution of the United States;

5 (3) to enforce the constitutional right to inter-
 6 state travel, pursuant to section 2 of article IV of
 7 the Constitution of the United States; and

8 (4) to regulate interstate commerce, pursuant
 9 to clause 3 of section 8 of article I of the Constitu-
 10 tion of the United States.

11 (c) INTENT.—This Act is not intended to and should
 12 not impede the ability of Federal, State, and local law en-
 13 forcement to protect the country and its people from any
 14 threat, be it foreign or domestic.

15 **SEC. 3. DEFINITIONS.**

16 In this Act:

17 (1) COVERED PROGRAM.—The term “covered
 18 program” means any program or activity funded in
 19 whole or in part with funds made available under—

20 (A) the Edward Byrne Memorial State and
 21 Local Law Enforcement Assistance Program
 22 (part E of title I of the Omnibus Crime Control
 23 and Safe Streets Act of 1968 (42 U.S.C. 3750
 24 et seq.));

1 (B) the Edward Byrne Memorial Justice
2 Assistance Grant Program, as described in ap-
3 propriations Acts; and

4 (C) the “Cops on the Beat” program
5 under part Q of title I of the Omnibus Crime
6 Control and Safe Streets Act of 1968 (42
7 U.S.C. 3796dd et seq.), but not including any
8 program, project, or other activity specified in
9 section 1701(d)(8) of that Act (42 U.S.C.
10 3796dd(d)(8)).

11 (2) GOVERNMENTAL BODY.—The term “govern-
12 mental body” means any department, agency, special
13 purpose district, or other instrumentality of Federal,
14 State, local, or Indian tribal government.

15 (3) INDIAN TRIBE.—The term “Indian tribe”
16 has the same meaning as in section 103 of the Juve-
17 nile Justice and Delinquency Prevention Act of 1974
18 (42 U.S.C. 5603)).

19 (4) LAW ENFORCEMENT AGENCY.—The term
20 “law enforcement agency” means any Federal,
21 State, local, or Indian tribal public agency engaged
22 in the prevention, detection, or investigation of viola-
23 tions of criminal, immigration, or customs laws.

24 (5) LAW ENFORCEMENT AGENT.—The term
25 “law enforcement agent” means any Federal, State,

1 local, or Indian tribal official responsible for enforce-
2 ing criminal, immigration, or customs laws, includ-
3 ing police officers and other agents of a law enforce-
4 ment agency.

5 (6) RACIAL PROFILING.—The term “racial
6 profiling” means the practice of a law enforcement
7 agent or agency relying, to any degree, on race, eth-
8 nicity, national origin, or religion in selecting which
9 individual to subject to routine or spontaneous inves-
10 tigatory activities or in deciding upon the scope and
11 substance of law enforcement activity following the
12 initial investigatory procedure, except when there is
13 trustworthy information, relevant to the locality and
14 timeframe, that links a person of a particular race,
15 ethnicity, national origin, or religion to an identified
16 criminal incident or scheme.

17 (7) ROUTINE OR SPONTANEOUS INVESTIGATORY
18 ACTIVITIES.—The term “routine or spontaneous in-
19 vestigatory activities” means the following activities
20 by a law enforcement agent:

21 (A) Interviews.

22 (B) Traffic stops.

23 (C) Pedestrian stops.

24 (D) Frisks and other types of body
25 searches.

1 (E) Consensual or nonconsensual searches
2 of the persons or possessions (including vehi-
3 cles) of motorists or pedestrians.

4 (F) Inspections and interviews of entrants
5 into the United States that are more extensive
6 than those customarily carried out.

7 (G) Immigration related workplace inves-
8 tigations.

9 (H) Such other types of law enforcement
10 encounters compiled by the Federal Bureau of
11 Investigation and the Justice Departments Bu-
12 reau of Justice Statistics.

13 (8) REASONABLE REQUEST.—The term “rea-
14 sonable request” means all requests for information,
15 except for those that—

16 (A) are immaterial to the investigation;

17 (B) would result in the unnecessary expo-
18 sure of personal information; or

19 (C) would place a severe burden on the re-
20 sources of the law enforcement agency given its
21 size.

22 (9) UNIT OF LOCAL GOVERNMENT.—The term
23 “unit of local government” means—

1 (A) any city, county, township, town, bor-
2 ough, parish, village, or other general purpose
3 political subdivision of a State;

4 (B) any law enforcement district or judicial
5 enforcement district that—

6 (i) is established under applicable
7 State law; and

8 (ii) has the authority to, in a manner
9 independent of other State entities, estab-
10 lish a budget and impose taxes;

11 (C) any Indian tribe that performs law en-
12 forcement functions, as determined by the Sec-
13 retary of the Interior; or

14 (D) for the purposes of assistance eligi-
15 bility, any agency of the government of the Dis-
16 trict of Columbia or the Federal Government
17 that performs law enforcement functions in and
18 for—

19 (i) the District of Columbia; or

20 (ii) any Trust Territory of the United
21 States.

TITLE I—PROHIBITION OF RACIAL PROFILING

3 SEC. 101. PROHIBITION.

4 No law enforcement agent or law enforcement agency
5 shall engage in racial profiling.

6 SEC. 102. ENFORCEMENT.

7 (a) REMEDY.—The United States, or an individual
8 injured by racial profiling, may enforce this title in a civil
9 action for declaratory or injunctive relief, filed either in
10 a State court of general jurisdiction or in a district court
11 of the United States.

12 (b) PARTIES.—In any action brought under this title,
13 relief may be obtained against—

14 (1) any governmental body that employed any
15 law enforcement agent who engaged in racial
16 profiling;

17 (2) any agent of such body who engaged in ra-
18 cial profiling; and

19 (3) any person with supervisory authority over
20 such agent.

21 (c) NATURE OF PROOF.—Proof that the routine or
22 spontaneous investigatory activities of law enforcement
23 agents in a jurisdiction have had a disparate impact on
24 racial, ethnic, or religious minorities shall constitute prima
25 facie evidence of a violation of this title.

1 (d) ATTORNEY’S FEES.—In any action or proceeding
 2 to enforce this title against any governmental unit, the
 3 court may allow a prevailing plaintiff, other than the
 4 United States, reasonable attorney’s fees as part of the
 5 costs, and may include expert fees as part of the attorney’s
 6 fee.

7 **TITLE II—PROGRAMS TO ELIMI-**
 8 **NATE RACIAL PROFILING BY**
 9 **FEDERAL LAW ENFORCE-**
 10 **MENT AGENCIES**

11 **SEC. 201. POLICIES TO ELIMINATE RACIAL PROFILING.**

12 (a) IN GENERAL.—Federal law enforcement agencies
 13 shall—

14 (1) maintain adequate policies and procedures
 15 designed to eliminate racial profiling; and

16 (2) cease existing practices that permit racial
 17 profiling.

18 (b) POLICIES.—The policies and procedures de-
 19 scribed in subsection (a)(1) shall include—

20 (1) a prohibition on racial profiling;

21 (2) training on racial profiling issues as part of
 22 Federal law enforcement training;

23 (3) the collection of data in accordance with the
 24 regulations issued by the Attorney General under
 25 section 401;

1 (4) procedures for receiving, investigating, and
 2 responding meaningfully to complaints alleging ra-
 3 cial profiling by law enforcement agents;

4 (5) policies requiring that appropriate action be
 5 taken when law enforcement agents are determined
 6 to have engaged in racial profiling; and

7 (6) such other policies or procedures that the
 8 Attorney General deems necessary to eliminate racial
 9 profiling.

10 **TITLE III—PROGRAMS TO ELIMI-**
 11 **NATE RACIAL PROFILING BY**
 12 **STATE, LOCAL, AND INDIAN**
 13 **TRIBAL LAW ENFORCEMENT**
 14 **AGENCIES**

15 **SEC. 301. POLICIES REQUIRED FOR GRANTS.**

16 (a) IN GENERAL.—An application by a State, a unit
 17 of local government, or a State, local, or Indian tribal law
 18 enforcement agency for funding under a covered program
 19 shall include a certification that such State, unit of local
 20 government, or law enforcement agency, and any law en-
 21 forcement agency to which it will distribute funds—

22 (1) maintains adequate policies and procedures
 23 designed to eliminate racial profiling; and

24 (2) does not engage in any existing practices
 25 that permit racial profiling.

1 (b) POLICIES.—The policies and procedures de-
2 scribed in subsection (a)(1) shall include—

3 (1) a prohibition on racial profiling;

4 (2) training on racial profiling issues as part of
5 law enforcement training;

6 (3) the collection of data in accordance with the
7 regulations issued by the Attorney General under
8 section 401;

9 (4) procedures for receiving, investigating, and
10 responding meaningfully to complaints alleging ra-
11 cial profiling by law enforcement agents, including
12 procedures that allow a complaint to be made
13 through any of the methods described in section
14 302(b)(2);

15 (5) mechanisms for providing information to
16 the public relating to the administrative complaint
17 procedure or independent auditor program estab-
18 lished under section 302;

19 (6) policies requiring that appropriate action be
20 taken when law enforcement agents are determined
21 to have engaged in racial profiling; and

22 (7) such other policies or procedures that the
23 Attorney General deems necessary to eliminate racial
24 profiling.

1 (c) EFFECTIVE DATE.—This section shall take effect
 2 12 months after the date of enactment of this Act.

3 **SEC. 302. ADMINISTRATIVE COMPLAINT PROCEDURE OR**
 4 **INDEPENDENT AUDITOR PROGRAM RE-**
 5 **QUIRED FOR GRANTS.**

6 (a) ESTABLISHMENT OF ADMINISTRATIVE COM-
 7 PLAIN COMPLAINT PROCEDURE OR INDEPENDENT AUDITOR PRO-
 8 GRAM.—An application by a State or unit of local govern-
 9 ment for funding under a covered program shall include
 10 a certification that the applicant has established and is
 11 maintaining, for each law enforcement agency of the appli-
 12 cant, either—

13 (1) an administrative complaint procedure that
 14 meets the requirements of subsection (b); or

15 (2) an independent auditor program that meets
 16 the requirements of subsection (c).

17 (b) REQUIREMENTS FOR ADMINISTRATIVE COM-
 18 PLAIN COMPLAINT PROCEDURE.—To meet the requirements of this
 19 subsection, an administrative complaint procedure shall—

20 (1) allow any person who believes there has
 21 been a violation of section 101 to file a complaint;

22 (2) allow a complaint to be made—

23 (A) in writing or orally;

24 (B) in person or by mail, telephone, fac-
 25 simile, or electronic mail; and

1 (C) anonymously or through a third party;

2 (3) require that the complaint be investigated

3 and heard by an independent review board that—

4 (A) is located outside of any law enforce-

5 ment agency or the law office of the State or

6 unit of local government;

7 (B) includes, as at least a majority of its

8 members, individuals who are not employees of

9 the State or unit of local government;

10 (C) does not include as a member any indi-

11 vidual who is then serving as a law enforcement

12 agent;

13 (D) possesses the power to request all rel-

14 evant information from a law enforcement

15 agency; and

16 (E) possesses staff and resources sufficient

17 to perform the duties assigned to the inde-

18 pendent review board under this subsection;

19 (4) provide that the law enforcement agency

20 shall comply with all reasonable requests for infor-

21 mation in a timely manner;

22 (5) require the review board to inform the At-

23 torney General when a law enforcement agency fails

24 to comply with a request for information under this

25 subsection;

1 (6) provide that a hearing be held, on the
2 record, at the request of the complainant;

3 (7) provide for an appropriate remedy, and
4 publication of the results of the inquiry by the re-
5 view board, if the review board determines that a
6 violation of section 101 has occurred;

7 (8) provide that the review board shall dismiss
8 the complaint and publish the results of the inquiry
9 by the review board, if the review board determines
10 that no violation has occurred;

11 (9) provide that the review board shall make a
12 final determination with respect to a complaint in a
13 reasonably timely manner;

14 (10) provide that a record of all complaints and
15 proceedings be sent to the Civil Rights Division and
16 the Bureau of Justice Statistics of the Department
17 of Justice;

18 (11) provide that no published information shall
19 reveal the identity of the law enforcement officer,
20 the complainant, or any other individual who is in-
21 volved in a detention; and

22 (12) otherwise operate in a manner consistent
23 with regulations promulgated by the Attorney Gen-
24 eral under section 303.

1 (c) REQUIREMENTS FOR INDEPENDENT AUDITOR
2 PROGRAM.—To meet the requirements of this subsection,
3 an independent auditor program shall—

4 (1) provide for the appointment of an inde-
5 pendent auditor who is not a sworn officer or em-
6 ployee of a law enforcement agency;

7 (2) provide that the independent auditor be
8 given staff and resources sufficient to perform the
9 duties of the independent auditor program under
10 this section;

11 (3) provide that the independent auditor be
12 given full access to all relevant documents and data
13 of a law enforcement agency;

14 (4) require the independent auditor to inform
15 the Attorney General when a law enforcement agen-
16 cy fails to comply with a request for information
17 under this subsection;

18 (5) require the independent auditor to issue a
19 public report each year that—

20 (A) addresses the efforts of each law en-
21 forcement agency of the State or unit of local
22 government to combat racial profiling; and

23 (B) recommends any necessary changes to
24 the policies and procedures of any law enforce-
25 ment agency;

1 (6) require that each law enforcement agency
 2 issue a public response to each report issued by the
 3 auditor under paragraph (5);

4 (7) provide that the independent auditor, upon
 5 determining that a law enforcement agency is not in
 6 compliance with this Act, shall forward the public
 7 report directly to the Attorney General;

8 (8) provide that the independent auditor shall
 9 engage in community outreach on racial profiling
 10 issues; and

11 (9) otherwise operate in a manner consistent
 12 with regulations promulgated by the Attorney Gen-
 13 eral under section 303.

14 (d) LOCAL USE OF STATE COMPLAINT PROCEDURE
 15 OR INDEPENDENT AUDITOR PROGRAM.—

16 (1) IN GENERAL.—A State shall permit a unit
 17 of local government within its borders to use the ad-
 18 ministrative complaint procedure or independent
 19 auditor program it establishes under this section.

20 (2) EFFECT OF USE.—A unit of local govern-
 21 ment shall be deemed to have established and main-
 22 tained an administrative complaint procedure or
 23 independent auditor program for purposes of this
 24 section if the unit of local government uses the ad-
 25 ministrative complaint procedure or independent

1 auditor program of either the State in which it is lo-
 2 cated, or another unit of local government in the
 3 State in which it is located.

4 (e) EFFECTIVE DATE.—This section shall go into ef-
 5 fect 12 months after the date of enactment of this Act.

6 **SEC. 303. INVOLVEMENT OF ATTORNEY GENERAL.**

7 (a) REGULATIONS.—

8 (1) IN GENERAL.—Not later than 6 months
 9 after the date of enactment of this Act and in con-
 10 sultation with stakeholders, including Federal, State,
 11 and local law enforcement agencies and community,
 12 professional, research, and civil rights organizations,
 13 the Attorney General shall issue regulations for the
 14 operation of the administrative complaint procedures
 15 and independent auditor programs required under
 16 subsections (b) and (c) of section 302.

17 (2) GUIDELINES.—The regulations issued
 18 under paragraph (1) shall contain guidelines that
 19 ensure the fairness, effectiveness, and independence
 20 of the administrative complaint procedures and inde-
 21 pendent auditor programs.

22 (b) NONCOMPLIANCE.—If the Attorney General de-
 23 termines that the recipient of any covered grant is not in
 24 compliance with the requirements of section 301 or 302
 25 or the regulations issued under subsection (a), the Attor-

1 ney General shall withhold, in whole or in part, funds for
 2 1 or more covered grants, until the grantee establishes
 3 compliance.

4 (c) PRIVATE PARTIES.—The Attorney General shall
 5 provide notice and an opportunity for private parties to
 6 present evidence to the Attorney General that a grantee
 7 is not in compliance with the requirements of this title.

8 **SEC. 304. DATA COLLECTION DEMONSTRATION PROJECT.**

9 (a) IN GENERAL.—The Attorney General shall,
 10 through competitive grants or contracts, carry out a 2-
 11 year demonstration project for the purpose of developing
 12 and implementing data collection on hit rates for stops
 13 and searches. The data shall be disaggregated by race,
 14 ethnicity, national origin, and religion.

15 (b) COMPETITIVE AWARDS.—The Attorney General
 16 shall provide not more than 5 grants or contracts to police
 17 departments that—

18 (1) are not already collecting data voluntarily or
 19 otherwise; and

20 (2) serve communities where there is a signifi-
 21 cant concentration of racial or ethnic minorities.

22 (c) REQUIRED ACTIVITIES.—Activities carried out
 23 under subsection (b) shall include—

24 (1) developing a data collection tool;

1 (2) training of law enforcement personnel on
2 data collection;

3 (3) collecting data on hit rates for stops and
4 searches; and

5 (4) reporting the compiled data to the Attorney
6 General.

7 (d) EVALUATION.—Not later than 3 years after the
8 date of enactment of this Act, the Attorney General shall
9 enter into a contract with an institution of higher edu-
10 cation to analyze the data collected by each of the 5 sites
11 funded under this section.

12 (e) AUTHORIZATION OF APPROPRIATIONS.—There
13 are authorized to be appropriated to carry out activities
14 under this section—

15 (1) \$5,000,000, over a 2-year period for a dem-
16 onstration project on 5 sites; and

17 (2) \$500,000 to carry out the evaluation in sub-
18 section (d).

19 **SEC. 305. BEST PRACTICES DEVELOPMENT GRANTS.**

20 (a) GRANT AUTHORIZATION.—The Attorney General,
21 through the Bureau of Justice Assistance, may make
22 grants to States, law enforcement agencies, and units of
23 local government to develop and implement best practice
24 devices and systems to eliminate racial profiling.

1 (b) USE OF FUNDS.—The funds provided under sub-
2 section (a) may be used for—

3 (1) the development and implementation of
4 training to prevent racial profiling and to encourage
5 more respectful interaction with the public;

6 (2) the acquisition and use of technology to fa-
7 cilitate the collection of data regarding routine inves-
8 tigatory activities sufficient to permit an analysis of
9 these activities by race, ethnicity, national origin,
10 and religion;

11 (3) the analysis of data collected by law en-
12 forcement agencies to determine whether the data
13 indicate the existence of racial profiling;

14 (4) the acquisition and use of technology to
15 verify the accuracy of data collection, including in-
16 car video cameras and portable computer systems;

17 (5) the development and acquisition of early
18 warning systems and other feedback systems that
19 help identify officers or units of officers engaged in,
20 or at risk of engaging in, racial profiling or other
21 misconduct, including the technology to support such
22 systems;

23 (6) the establishment or improvement of sys-
24 tems and procedures for receiving, investigating, and
25 responding meaningfully to complaints alleging ra-

1 cial, ethnic, or religious bias by law enforcement
2 agents;

3 (7) the establishment or improvement of man-
4 agement systems to ensure that supervisors are held
5 accountable for the conduct of their subordinates;
6 and

7 (8) the establishment and maintenance of an
8 administrative complaint procedure or independent
9 auditor program under section 302.

10 (c) **EQUITABLE DISTRIBUTION.**—The Attorney Gen-
11 eral shall ensure that grants under this section are award-
12 ed in a manner that reserves an equitable share of funding
13 for small and rural law enforcement agencies.

14 (d) **APPLICATION.**—Each State, local law enforce-
15 ment agency, or unit of local government desiring a grant
16 under this section shall submit an application to the Attor-
17 ney General at such time, in such manner, and accom-
18 panied by such information as the Attorney General may
19 reasonably require.

20 **SEC. 306. AUTHORIZATION OF APPROPRIATIONS.**

21 There are authorized to be appropriated such sums
22 as are necessary to carry out this title.

1 **TITLE IV—DATA COLLECTION**

2 **SEC. 401. ATTORNEY GENERAL TO ISSUE REGULATIONS.**

3 (a) REGULATIONS.—Not later than 6 months after
 4 the enactment of this Act, the Attorney General, in con-
 5 sultation with stakeholders, including Federal, State, and
 6 local law enforcement agencies and community, profes-
 7 sional, research, and civil rights organizations, shall issue
 8 regulations for the collection and compilation of data
 9 under sections 201 and 301.

10 (b) REQUIREMENTS.—The regulations issued under
 11 subsection (a) shall—

12 (1) provide for the collection of data on all rou-
 13 tine or spontaneous investigatory activities;

14 (2) provide that the data collected shall—

15 (A) be collected by race, ethnicity, national
 16 origin, gender, and religion, as perceived by the
 17 law enforcement officer;

18 (B) include the date, time, and location of
 19 the investigatory activities; and

20 (C) include detail sufficient to permit an
 21 analysis of whether a law enforcement agency is
 22 engaging in racial profiling;

23 (3) provide that a standardized form shall be
 24 made available to law enforcement agencies for the

1 submission of collected data to the Department of
2 Justice;

3 (4) provide that law enforcement agencies shall
4 compile data on the standardized form created under
5 paragraph (3), and submit the form to the Civil
6 Rights Division and the Bureau of Justice Statistics
7 of the Department of Justice;

8 (5) provide that law enforcement agencies shall
9 maintain all data collected under this Act for not
10 less than 4 years;

11 (6) include guidelines for setting comparative
12 benchmarks, consistent with best practices, against
13 which collected data shall be measured; and

14 (7) provide that the Bureau of Justice Statis-
15 tics shall—

16 (A) analyze the data for any statistically
17 significant disparities, including—

18 (i) disparities in the percentage of
19 drivers or pedestrians stopped relative to
20 the proportion of the population passing
21 through the neighborhood;

22 (ii) disparities in the percentage of
23 false stops relative to the percentage of
24 drivers or pedestrians stopped; and

1 (iii) disparities in the frequency of
2 searches performed on minority drivers
3 and the frequency of searches performed
4 on non-minority drivers; and

5 (B) not later than 3 years after the date
6 of enactment of this Act, and annually there-
7 after, prepare a report regarding the findings of
8 the analysis conducted under subparagraph (A)
9 and provide the report to Congress and make
10 the report available to the public, including on
11 a website of the Department of Justice.

12 **SEC. 402. PUBLICATION OF DATA.**

13 The Bureau of Justice Statistics shall provide to Con-
14 gress and make available to the public, together with each
15 annual report described in section 401, the data collected
16 pursuant to this Act.

17 **SEC. 403. LIMITATIONS ON PUBLICATION OF DATA.**

18 The name or identifying information of a law enforce-
19 ment officer, complainant, or any other individual involved
20 in any activity for which data is collected and compiled
21 under this Act shall not be—

- 22 (1) released to the public;
- 23 (2) disclosed to any person, except for such dis-
24 closures as are necessary to comply with this Act;

1 (3) subject to disclosure under section 552 of
 2 title 5, United States Code (commonly know as the
 3 Freedom of Information Act).

4 **TITLE V—DEPARTMENT OF JUS-**
 5 **TICE REGULATIONS AND RE-**
 6 **PORTS ON RACIAL**
 7 **PROFILING IN THE UNITED**
 8 **STATES**

9 **SEC. 501. ATTORNEY GENERAL TO ISSUE REGULATIONS**
 10 **AND REPORTS.**

11 (a) REGULATIONS.—In addition to the regulations re-
 12 quired under sections 303 and 401, the Attorney General
 13 shall issue such other regulations as the Attorney General
 14 determines are necessary to implement this Act.

15 (b) REPORTS.—

16 (1) IN GENERAL.—Not later than 2 years after
 17 the date of enactment of this Act, and each year
 18 thereafter, the Attorney General shall submit to
 19 Congress a report on racial profiling by law enforce-
 20 ment agencies.

21 (2) SCOPE.—Each report submitted under
 22 paragraph (1) shall include—

23 (A) a summary of data collected under sec-
 24 tions 201(b)(3) and 301(b)(1)(C) and from any

other reliable source of information regarding racial profiling in the United States;

(B) a discussion of the findings in the most recent report prepared by the Bureau of Justice Statistics under section 401(a)(8);

(C) the status of the adoption and implementation of policies and procedures by Federal law enforcement agencies under section 201;

(D) the status of the adoption and implementation of policies and procedures by State and local law enforcement agencies under sections 301 and 302; and

(E) a description of any other policies and procedures that the Attorney General believes would facilitate the elimination of racial profiling.

TITLE VI—MISCELLANEOUS PROVISIONS

SEC. 601. SEVERABILITY.

If any provision of this Act or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this Act and the application of the provisions of this Act to any person or circumstance shall not be affected thereby.

1 **SEC. 602. SAVINGS CLAUSE.**

2 Nothing in this Act shall be construed to limit legal
3 or administrative remedies under section 1979 of the Re-
4 vised Statutes of the United States (42 U.S.C. 1983), sec-
5 tion 210401 of the Violent Crime Control and Law En-
6 forcement Act of 1994 (42 U.S.C. 14141), the Omnibus
7 Crime Control and Safe Streets Act of 1968 (42 U.S.C.
8 3701 et seq.), and title VI of the Civil Rights Act of 1964
9 (42 U.S.C. 2000d et seq.).

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